

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

NOTICE OF MOTION

Docket No. 13-CR-00151

VS

Ryan C. Lander

Defendant

PLEASE TAKE NOTICE, that upon the annexed affirmation of Patrick J. Brown, Esq. sworn to on the day of June, 2017, the undersigned respectfully moves this Court for an Order permitting reconsideration of this Court's Decision and Order which denied the Defendant's Motion to Set Aside his plea of guilty. (DKT#94).

Dated: Buffalo, New York
June 21, 2017

S/ Patrick J. Brown

Patrick J. Brown, Esq.
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IN THE UNITED STATES DISTRICT COURT
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Docket No. 13-CR-00151

VS

DECLARATION

Ryan C. Lander

The undersigned attorney duly admitted to practice before this Court
affirms the following under penalty of perjury:

1. The undersigned is the attorney for the Defendant, Ryan C. Lander
in the above action.
2. The Defendant acknowledges that there is no express criminal
procedure provision for a reconsideration motion. That, notwithstanding,
courts in this Circuit have applied the applicable civil standard of such motions
in criminal cases. *United States v. Gundy*, No. 13 Crim. 8 (JPO), 2013 WL 4838845
*1 (SDNY Sept. 11, 2013); *United States v. Briggs*, No. 10 CR 184 S, 2012 WL
5449688, *2 (W.D.N.Y. Nov. 7, 2012).
3. One of the justifications for reconsideration is the need to prevent

manifest injustice. *Virgin Atl. Airways, Ltd. V. Nat'l Mediation Board*, 956 F. 2d 1245, 1255 (2d Cir. 1992) *cert. denied*, 506 U.S. 820 (1992).

4. The Defendant respectfully relies upon and incorporates by reference, the matters set forth in his affidavit supporting the motion to set aside his guilty plea (DKT#88).

5. The Defendant maintains that he was not made aware of the contents of the pretrial motion prepared, but not filed by erstwhile counsel until April 14, 2016, more than two years following the entry of his guilty plea. The Defendant further maintains that erstwhile counsel failed to divulge requested details concerning the evidence against him and further maintains that this evidence is highly relevant because a lengthy preliminary investigation at his residence revealed no incriminating evidence on any of his computer equipment.

6. The Defendant further maintains that erstwhile counsel admitted that he had coerced the Defendant into pleading guilty and had enlisted his father in this effort.

7. In addition, the Defendant maintains there were many discussions between he and erstwhile counsel about moving to withdraw his guilty plea and requesting new counsel.

8. The Defendant maintains that a letter he wrote to the Court, dated March 15, 2016 (DKT# 74) was originally written on December 30, 2015, but held back due to pressure he received from erstwhile counsel and his father.

9. This Court then permitted the withdrawal of Defendant's erstwhile counsel when it granted his motion based upon a conflict which had arisen between the Defendant and erstwhile counsel. (DKT# 80).

10. It is the Defendant's position that erstwhile counsel's representation fell below an objective standard of reasonableness and that he only agreed to plead guilty, having been advised to do so by counsel operating under a conflict of interest.

11. The Defendant further maintains that but for acquiescing to advice from ineffective counsel, his pretrial motions would have been argued and the case set down for trial where he would employ a plausible defense strategy.

12. For these reasons, it is respectfully requested the Court reconsider Its Decision and Order on this motion and vacate the Defendant's plea of guilty.

Dated: Buffalo, New York
June 21, 2017 S/ Patrick J. Brown

Patrick J. Brown